

VERNON BRADLEY

IBLA 81-844

Decided September 8, 1981

Appeal from a decision of the Nevada State Office of the Bureau of Land Management, declaring certain unpatented mining claims abandoned and void for failure to timely file a notice of intent or proof of labor. N MC-126023 through N MC-126040.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself.

This rule is self-operative and does not depend upon any act or decision of an administrative official. Congress did not invest the Secretary with authority to waive or excuse noncompliance with this statute or to afford claimants any relief from the statutory consequences.

APPEARANCES: Terry V. Schooley, Administratrix of the estate of Vernon D. Bradley.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

In a decision dated May 27, 1981, the Nevada State Office of the Bureau of Land Management (BLM), declared several of appellant's 1/ unpatented mining claims abandoned and void because evidence of annual assessment work performed, or else a notice of intention to hold the mining claim, had not been filed with the proper BLM office for the calendar year 1980 on or before December 30, 1980, as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976).

On appeal, the Estate of Vernon Bradley (appellant), is represented by the administratrix, Terry V. Schooley. She states:

My father, Vernon D. Bradley, died January 2, 1981, due to a lengthy illness of cancer.

I feel that the reason he did not get his proof of labor on Ringolite Claims 1 thru 18, N MC #126023 thru 126040, into the [BLM], Reno, Nevada, was because he just didn't feel up to it due to his illness. He had given his proof of labor to his partner, Robert Revert, approximately December 20, 1980, trusting he had plenty of time to get them filed by December 30, 1980. As you can see, Mr. Revert did not send the proof of labor until December 29, 1980. Therefore, the [BLM], Reno, Nevada, did not receive it until January 2, 1981.

The recordation requirement is established in section 314 of FLPMA, 43 U.S.C. § 1744(a)(1) and (2), which states in pertinent part:

1/ The claims in question are N MC-126023 through N MC-126038 (located July 17, 1973); N MC-126039 (located July 20, 1973); and N MC-126040 (located July 17, 1973). These claims were owned by Vernon D. Bradley, now deceased, and Robert A. Revert, who has not joined in this appeal.

(a) The owner of an unpatented lode or placer mining claim located prior to October 21, 1976, shall, within the three-year period following October 21, 1976, and prior to December 31 of each year thereafter, file the instruments required by paragraphs (1) and (2) of this subsection. * * *

(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim * * *, an affidavit of assessment work performed thereon, [or] a detailed report provided by section 28-1 of Title 30, relating thereto.

(2) File in the office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground.

These requirements are also set forth with some elaboration in BLM's regulations at 43 CFR 3833.2.

[1,2] This filing requirement is mandatory under the statute and under the regulations, and, thus, the Secretary has no discretion to waive compliance therewith. Lynn Keith, 53 IBLA 192, 196, 88 I.D. 369, 372, (1981). Failure to file this evidence of assessment work is "deemed conclusively to constitute an abandonment of the mining claim * * * by the owner." 43 U.S.C. § 1744(c). In such a case, the mining claim also "shall be void." 43 CFR 3833.4(a); Topaz Beryllium Co. v. United States, 479 F. Supp. 309, 315 (D. Utah 1979), aff'd, 649 F.2d 775 (10th Cir. 1981). As this Board has previously noted, this "conclusive presumption" is effective without action by any administrative official, and no one within the Department of the Interior is empowered "to afford claimants any relief from the statutory consequences." Lynn Keith, *supra* at 196, 88 I.D. at 372.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Gail M. Frazier
Administrative Judge

